

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 311 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BAROT UDESING @ BABULAL

Versus

BALABHAI BHAGUBHAI

Appearance:

MR JD AJMERA for Petitioners

MR DD VYAS for Respondent No. 1, 4

SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/01/98

ORAL JUDGEMENT

This is plaintiff's Second Appeal.

2. The brief facts giving rise to this Appeal are as follows :

The Barots were allowed to take the income as

received from the Jain Temples of Shetrunjaya Hills. About 14 years back by way of settlement a sum of Rs.40,000/- was agreed to be paid to the Barots by the said Pedhi as annuity and the amount was distributed amongst all members of Barots community. According to the plaintiff Hirjibhai Kalyanjibhai was a member of Barot community of Palitana. He married to Revaben and got two sons from this wedlock, viz. Gambhirsinh and Dhirubhai. Dhirubhai died leaving behind two sons Pravinbhai and Ashokbhai. Hirjibhai also married another woman Kashiben and both of them lived together as husband and wife. Udesinh and Kantilal were born out of this so called wedlock. Udesinh has a sons, named, Chhabilbhai and Kantilal has a son, named, Harshadbhai, who are plaintiffs No.1 to 4.

3. The defendants being the leaders of Barot community are distributing the annuity amount of Rs.40,000/- as received from the Pedhi amongst the members of Barot community. The allegation of the plaintiffs is that no such amount of annuity was given to them by the defendants though they are legally entitled to receive the same. Consequently the Suit was filed for recovery of Rs.400/- as annuity for a period of one year payable on 11.7.1976. The Suit was filed in representative capacity under Order : 1, Rule : 8 of the Code of Civil Procedure Code.

4. The defendant contested the Suit on variety of grounds. The main contest was that the plaintiffs are not entitled to any annuity. It was their specific case that Udesinh and Kantilal are the sons of Kashiben Hirjibhai and as Kashiben happened to be of caste other than Barot community, according to the caste customs the plaintiffs are not entitled to any amount.

5. The trial Court dismissed the Suit. An appeal was preferred and the same also dismissed. Hence this Second Appeal.

6. The only substantial question of law pressed by the learned Counsel for the appellants has been that both the Courts below have committed manifest error of law in applying the custom in a discriminatory manner. He has tried to elucidate his argument by stating that nodoubt the annuity is to be distributed amongst the male members of barot community and that the father of the plaintiffs was also Barot, the Plaintiffs married in Barot community and their sons are also members of Barot community, the annuity amount could not be denied to the plaintiffs merely because they were born from the mother who belongs

to community other than the Barot community.

7. Both the Courts below on the strength of evidence on record and admission of the plaintiff and various instances cited in the Judgment came to the conclusion that it has been an established custom in the community that annuity amount is to be distributed only amongst male members who are born from lady belonging to Barot community and not to the members who are born from the lady belonging to another community. On the strength of this custom annuity amount was refused to the plaintiffs by both the Courts below. Apparently the custom may not sound well, but it does not appear to be illegal and unenforceable. Number of instances have been cited in the judgment when the male members born from females belonging to other community were not paid annuity amount. The learned Counsel for the appellant further contended that those persons might not have claimed annuity amount who were born from a mother belonging to community other than the Barot community, but that does not operate as estoppel against the plaintiffs in claiming the annuity amount. However, in the absence of specific evidence that in those instances cited in the Judgment of the lower Appellate Court the members acquired in not claiming the annuity amount, no such finding can be given that the custom is unreasonable or illegal or enforceable.

8. Since both the Courts below have on the strength of the evidence on record, concluded that there has been such custom that male members of Barot community who are born from lady belonging to Barot community only are entitled to receive the amount, no illegality seems to have been committed by both the Courts below.

9. There is thus no substance in this Appeal. The same is hereby dismissed. No order as to costs.

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